IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 616.

ALLAN RUTLEDGE, JR., CARLTON E. STEVENS, KENYON W. KANTZ, CHARLES C. CONKLING, *Petitioners,*

v.

UNITED SERVICES LIFE INSURANCE COMPANY, a body corporate, *Respondent.*

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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Summary of Argument.

1. The question involved is strictly one of local law which this court will not disturb.

2. No federal law, federal question, or proposition of diversity among circuits is involved.

3. The United States Circuit Court of Appeals for the District of Columbia correctly decided this proposition in accordance with recognized authority of the federal and state courts.

4. The suggestion of unjust enrichment accruing to the respondent is unsupported by the record and is directly contrary to the determination of the Auditor of the Trial Court, supported by the confirmation on the part of the Trial Court that no advantage to the respondent insurance company was realized by reason of the business put on the books by the petitioner insurance agents.

Argument.

I.

The question involved is strictly one of local law which this court will not disturb.

This Honorable Court ordinarily will not examine a question of strictly local law determined by the United States Circuit Court of Appeals for the District of Columbia, the Court of last resort in this jurisdiction.

There is nothing novel involved in this case. The Court of Appeals simply determined that the petitioner agents had contracts with the United Services Sales Department, a separate, corporate entity from the United Services Life Insurance Company, and had no contracts whatsoever with the life insurance company. Its decision is predicated largely on the well recognized proposition that the right of an insurance agent to renewal commissions must be bottomed on express contract with the insurance company from which collection is sought.

As for the finality of the determination of the United States Circuit Court of Appeals for the District of Columbia on a question of purely local law, it is noteworthy to observe that, as recently as January 17, 1949, Mr. Justice Black, in the case of *Spiegel* v. *Commissioner of Internal Revenue,* .... U. S. ....; 93 L. Ed. Adv. Opinions 327-333;

> "* * * Under these circumstances we will follow our general policy and leave undisturbed this Court of Appeals holding on a question of state law."

This Court has frequently recognized that sound judicial policy and administration require that the determination of local law in the District of Columbia be left to the United States Court of Appeals for the District of Columbia. As illustrative of this policy, in *Fisher* v. *United States,* 328 U. S. 463, 476, this Court (Mr. Justice Reed) said:

> "Where the choice of the Court of Appeals of the District of Columbia in local matters between conflicting legal conclusions seems nicely balanced, we do not interfere. District of Columbia v. Pace, 320 U. S. 698, 702; Busby v. Electric Utilities Union, 323 U. S. 72, 74-5."

And in *Del Vecchio* v. *Bowers,* 296 U. S. 280, 284, the following appears:

> "We will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited, or which declare the common law of the District."

II.

No federal law, federal question, or proposition of diversity among circuits is involved.

There is totally lacking in this case any of the grounds that ordinarily exist as the prerequisite to this Honorable Court issuing the writ of certiorari for the purpose of examining the determination of the courts below. No federal statute is involved. There is no federal question concerned. There is cited nothing in the way of diversity either among the circuits themselves or between circuits on one hand and state courts of last resort. Indeed, one of the principal cases in support of respondent's contentions in this case is that of *Masden* v. *Travelers' Insurance Company,* decided by the Eighth Circuit, and in effect holding that the right of an insurance agent to collect renewal premiums must be bottomed on express contract between the agent and the company sought to be charged.

III.

The United States Circuit Court of Appeals for the District of Columbia correctly decided this proposition in accordance with recognized authority of the federal and state courts.

The leading authority in support of the position taken by the respondent in the instant case is *Masden* v. *Travelers' Insurance Company*, 52 F. (2d) 75. As reprinted in 79 A.L.R. 469, it will be observed that the annotation cites cases in support from Alabama, Arkansas, Connecticut, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, Missouri, New York, North Carolina, Oklahoma, Tennessee, and Texas.

IV.

The suggestion of unjust enrichment accruing to the respondent is unsupported by the record and is directly contrary to the determination of the Auditor of the Trial Court, supported by the confirmation on the part of the Trial Court that no advantage to the respondent insurance company was realized by reason of the business put on the books by the petitioner insurance agents.

The petitioners in this case insist that the respondent insurance company unjustly has been enriched without compensation flowing to the agents who procured this business. This suggestion really calls for this Honorable Court at this stage of the proceedings to arrive at a finding of fact, independently of the Trial Court and without having before it the entire record in the cases involved. It is respectfully submitted that a finding of fact is the prerogative of a trial court, either to be approved or disapproved by a reviewing court.

Again, the claim of unjust enrichment is contrary to the record of this case and collateral cases below. The Auditor of the Trial Court, who sits as a Special Master for the purpose of determining disputed questions of fact, found

that no advantage had accrued to the insurance company, and this finding was specifically confirmed by the Trial Court (R. 66). Examination of the record reveals the fact to be that the agents of the United Services Sales Department collected approximately a quarter of a million dollars in commissions from the Sales Department and turned to the life insurance company for remuneration, only when the directors of the life insurance company rescinded the general agency contract with the sales department. This contract between the life insurance company and the sales department, it was observed by the United States Circuit Court of Appeals, was heavily loaded in favor of the sales department as against the insurance company, (R. 77).

Conclusion.

On the basis of the foregoing it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully,

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